

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, ex rel.)
JEREMIAH W. (JAY) NIXON,)
Attorney General,)

Plaintiff,)

Case No. _____

vs.)

Division No. _____

AVENTIS CROPSCIENCE USA LP)
2 T. W. Alexander Drive)
P.O. Box 12014)
Research Triangle Park, NC 27709)
Serve:)
CSC-Lawyers Incorporating Srv.)
221 Bolivar)
Jefferson City, MO 65101)

and)

AVENTIS CROPSCIENCE USA)
HOLDING, INC.)
2 T. W. Alexander Drive)
P.O. Box 12014)
Research Triangle Park, NC 27709)
Serve:)
CSC-Lawyers Incorporating Srv.)
221 Bolivar)
Jefferson City, MO 65101)

Defendants.)

**PETITION FOR JUDGMENT, INJUNCTIVE RELIEF,
CIVIL PENALTIES, DAMAGES AND OTHER RELIEF**

Plaintiff, the State of Missouri, pursuant to Chapter 407.020 *et. seq.*, by and through its Attorney General and Assistant Attorneys General, states in support of its petition:

PARTIES AND JURISDICTION

1. Jeremiah W. (Jay) Nixon is the duly elected and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to Chapter 407 RSMo 2000.

2. Defendant Aventis Cropscience USA LP, ("Aventis LP") is a limited partnership organized under the laws of the state of Delaware, with its principal place of business at 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. Aventis LP is registered to do business in Missouri as a foreign corporation.

3. Defendant Aventis Cropscience USA Holding Inc. ("Aventis Inc.") is a corporation organized under the laws of the state of Delaware, with its principal place of business at 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. Aventis Inc. is registered to do business in Missouri as a foreign corporation. (Aventis LP and Aventis Inc. will be referred to herein collectively as "Aventis").

4. This Court has subject matter jurisdiction over this matter pursuant to § 407.100, RSMo 2000.

5. Venue is proper in this Court pursuant to § 407.100, RSMo 2000, and/or § 508.040, RSMo 2000 because the acts which are alleged to violate section 407.020 occurred, in part, in St. Charles County, Missouri.

THE MISSOURI MERCHANDISING PRACTICES ACT

6. Section 407.020, RSMo 2000 provides, in pertinent part:

The act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in Section 407.453, in or from the State of Missouri, is declared to be an unlawful practice.

Section 407.100, RSMo 2000, provides:

1. Whenever it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.
2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from the state or that such orders or injunctions are otherwise necessary.
3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.
4. The court in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including but not limited to, any

moneys or property, real or personal, which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured.

5. The court, in its discretion, may appoint a receiver to insure the conformance to any orders issued under subsection 3 of this section or to insure the payment of any damages ordered under subsection 4 of this section.

6. The court may award to the state a civil penalty of not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

7. Any action under this section may be brought in the county in which the defendant resides, where the violation alleged to have been committed occurred, or where the defendant has his principal place of business.

7. "Advertisement" is defined by § 407.010(1) as "the attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise."

8. "Merchandise" is defined by § 407.010(4) as "any objects, wares, goods, commodities, intangibles, real estate or services."

9. "Sale" is defined by § 407.010(6) as "any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or credit."

10. "Trade or Commerce" is defined by § 407.010(7) as "the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real personal, or mixed and any other article, commodity, or thing of value wherever

situated. The terms 'trade' and 'commerce' include any trade or commerce directly or indirectly affecting the people of this state."

11. 15 CSR § 60-8.020 defines "unfair practice" as follows:

(1) An unfair practice is any practice which -

(A) Either -

1. Offends any public policy as it has been established by the Constitution, statutes or common law of this state, or by the Federal Trade Commission, or its interpretive decisions; or

2. Is unethical, oppressive or unscrupulous; and

(B) Presents a risk of, or causes, substantial injury to consumers.

(2) Proof of deception, fraud or misrepresentation is not required to prove unfair practices as used in section 407.020.1, RSMo

FACTS

12. Upon information and belief, a company known as "AgrEvo USA Company" (or a parent company, subsidiary, predecessor or a company that was affiliated with AgrEvo USA Company) developed a seed corn that is genetically engineered or biochemically engineered containing a certain insecticidal protein known as "Bacillus thuringiensis subspecies tolworthi Cry9C Protein" ("Cry9C") .

13. Cry9C is toxic to certain corn pest insects, including a pest known as the "European corn borer", and corn or seed corn which contains Cry9C is a pesticide.

14. AgrEvo USA Company patented the Cry9C technology for seed corn to be marketed in the United States (the said AgrEvo USA Company will hereinafter be referred to as "AgrEvo").

15. AgrEvo called the seed corn it produced with the Cry9C technology “StarLink” and obtained a trademark for that name for that seed corn. [The StarLink brand seed corn will hereinafter be referred to as "StarLink seed corn". The corn produced from StarLink seed com will hereinafter be referred to as "StarLink corn".]

16. In 1998, AgrEvo registered StarLink seed corn with the Environmental Protection Agency (“EPA”), but only for limited use. The EPA approved the sale of StarLink seed corn for use in producing corn to be used for domestic feed or for industrial purposes.

17. The EPA registration of StarLink seed corn, among other things, required the licensee (then AgrEvo, but now, its successor in interest, Aventis) to ensure that:

- a. at the time of StarLink seed corn sales, all purchasers of StarLink seed corn (“Grower”) would be informed of the need to direct StarLink corn for domestic feed and industrial non-food uses only;

- b. all Growers signed a "Grower Agreement" containing, certain refuge requirements, the domestic feed and industrial non-food uses only requirements, and isolation distance provisions;

- c. upon delivery of the seed, all Growers receive a copy of a certain "Grower Guide" containing the provisions stated in the Grower Agreement;

- d. Growers have access to a confidential list of feed outlets and/or elevators and be provided with a list of local feed outlets and/or elevators that direct grain to domestic feed and industrial non-food uses;

e. prior to planting, Growers be provided with a letter reminding them of the domestic feed and industrial non-food uses requirement for StarLink corn;

f. all literature provided to Growers, contain a toll free number the Grower could call for further information, clarification, and/or guidance;

g. a reminder letter be provided to StarLink corn Growers before harvest that includes a list of the potential delivery sites in the Grower's county; and

h. following harvest, a statistically sound follow-up survey of Growers be conducted to monitor for compliance with the provisions of the signed Grower Agreements.

18. AgrEvo advertised, promoted, offered and/or sold, or licensed others to sell, StarLink seed corn for use in the production of corn to, among others, citizens of the State of Missouri.

19. Upon information and belief, AgrEvo, or its parent company, merged with other companies to form a company known as "Aventis Cropscience" in late 1999 or early 2000.

20. Defendant Aventis LP and Defendant Aventis Inc. were created after the formation of Aventis Cropscience.

21. At the time of, or after the formation of, Aventis Cropscience, Aventis acquired the rights to the United States patent for StarLink corn and the trademark name, StarLink Corn, from AgrEvo.

22. Since acquiring the rights to the Cry9C technology and StarLink seed corn, Aventis, has advertised, promoted, offered and/or sold genetically engineered seed corn under the trade name "StarLink" for use in the production of corn to citizens of the State of Missouri.

23. Defendants advertised and promoted StarLink seed corn to consumers in Missouri as providing superior European corn borer control, excellent cutworm protection, resistance to certain weed killing herbicides, and as being a management tool for insect resistance.

24. Missouri Growers purchased StarLink seed corn in at least 45 counties in the State of Missouri, including St. Charles County, Missouri. In the 2000 crop year, Missourians planted approximately 18,702 acres with StarLink seed corn.

25. In advertising, promoting, marketing and/or selling StarLink seed corn, Defendants omitted material information. Growers in Missouri, including Growers in St. Charles County, Missouri, purchased StarLink seed corn, and produced corn using such seed corn, without knowing of the EPA's restrictions imposed upon the use of StarLink seed corn and the corn produced from StarLink seed corn.

26. In the late summer or early fall of 2000, Cry9C was detected in certain foods produced commercially for human consumption.

27. Since the discovery of Cry9C in the human food system, testing at farms and elevators in Missouri has uncovered:

- a. the presence of Cry9C in a substantial amount of the corn harvested and stored in Missouri, including corn that was not produced directly from StarLink seed corn;

- b. corn not produced from StarLink seed corn commingled with StarLink corn;

- c. corn not produced from StarLink seed corn cross-pollinated with StarLink corn;

and

- d. corn not produced from StarLink seed corn commingled with non-StarLink corn which contains Cry9C.

28. As a direct and proximate result of the marketing, promoting, advertising, and/or sale of StarLink corn in Missouri by Defendants, Missouri consumers, including Growers, farmers, elevator businesses, and investors who have grown, stored, or purchased corn which contains Cry9C:

- a. purchased and planted StarLink seed corn and raised StarLink corn; or
- b. purchased corn without knowing it contained Cry9C; or
- c. purchased corn that contained Cry9C without knowing of the restrictions imposed upon the sale of corn which contains Cry9C; or
- d. raised or obtained corn without knowing it contains Cry9C because of cross-pollination with other corn which contains Cry9C; or
- e. have corn that originally did not contain Cry9C that was later contaminated with Cry9C; or
- f. have corn that originally did not contain Cry9C that was contaminated with Cry9C; and

have been unable to sell such corn, use such corn for the purpose they intended, or sell such corn for the price they would have received had the corn not been StarLink corn or otherwise contained Cry9C.

COUNT I

(Concealment, Suppression, or Omission of Material Facts)

29. Plaintiff realleges and incorporates by reference paragraphs 1 - 28 of this petition as if more fully set forth herein.

30. All the matters hereinafter pled in all counts as being the actions, inactions, omissions, and commissions of Aventis also include the actions, inactions, omissions and commissions of Aventis' predecessor in interest, AgrEvo.

31. Aventis engaged in methods, acts, uses, practices, and/or solicitation declared to be unlawful by Chapter 407 RSMo, in that it advertised, promoted, marketed, and sold StarLink seed corn in Missouri without disclosing to Growers material and factual information regarding the restrictions imposed by the EPA on the use of StarLink seed corn and corn grown from StarLink seed corn, and information the EPA required Aventis to provide to Growers.

32. The information which Aventis failed to provide Growers or omitted from the information provided to Growers was material in that if it had been provided to the Growers, it may have affected the Growers' decision to purchase the StarLink seed corn and may have affected the manner in which the Growers handled and used the StarLink seed corn and the StarLink corn produced from the StarLink seed corn.

33. As a result of the Aventis' omission of material facts and failure to disclose all material facts to the Growers, Missouri consumers, including Growers, farmers, elevator businesses, and investors who have grown, stored, or purchased corn which contains Cry9C, have been harmed in that:

- a. they have not been able to fulfill contracts which required them to supply corn that does not contain Cry9C;
- b. such corn is worth less on the market than corn which does not contain Cry9C;
- c. the market options for such corn are considerably fewer than those for corn which does not contain Cry9C;

d. they have had to accept a lower price for the corn than they would have if it had not contained Cry9C or been contaminated with Cry9c

e. they have expended a substantial amount of time and money working to determine if their corn contains Cry9C;

f. they have had to refrain from selling their corn until an appropriate market can be found, and have therefore incurred additional expenses associated with the transportation and storage of the grain, have lost opportunities to use money that would have been available from the sale of the corn;

g. they have expended a substantial amount of time and money to clean farm implements, equipment, trailers, trucks, and storage facilities that were used to plant, care for, harvest, transport, and store StarLink seed corn and corn that contained Cry9C; and

h. they have suffered harm to their credibility as a reliable supplier of corn to the normal purchasers of their corn.

WHEREFORE, the Attorney General prays this Court for a judgment on behalf of the Plaintiff and against the defendants that Defendant Aventis Cropscience USA LP and Defendant Aventis Cropscience USA Holding Inc. have violated § 407.020, RSMo 2000, as aforesaid, and further ordering:

(1) Preliminary and permanent injunctions, pursuant to § 407.100.1, RSMo, 2000, enjoining Defendants Aventis Cropscience USA LP and Aventis Cropscience USA Holding Inc., and their parent companies, subsidiaries, agents, employees, representatives, attorneys, assigns, and all those acting for them in whatever capacity from:

(a) Violating § 407.020, RSMo 2000 by the act, use or employment of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of any material fact in connection with the sale or advertisement of any merchandise or commodity, including but not limited to, seed corn and pesticide, in trade or commerce in or from the State of Missouri, including but not limited to, that conduct alleged herein;

(b) Marketing, advertising, offering, selling and/or promoting by any means, in or into the State of Missouri any seed which is not approved for human consumption by the appropriate regulatory agency;

(c) Misrepresenting that StarLink seed corn is superior seed corn for the production of corn by farmers in the State of Missouri; and

(d) Concealing, suppressing and omitting the following material facts:

- the need to direct StarLink corn for domestic feed and industrial non-food uses only;
- the need for all Growers to sign a certain Grower Agreement containing certain refuge requirements, the domestic feed and industrial non-food uses only requirements, and isolation provisions regarding grain grown within 660 feet of the corn produced from StarLink seed corn needing to be directed to domestic feed and industrial non-food uses;
- the information contained in a Grower Guide that was to be provided to all Growers according to the requirements of the EPA;

- the identity of the local feed outlets and/or elevators that direct grain to domestic feed and industrial non-food uses in the Grower's county or the adjacent counties;
- prior to planting, a letter reminding Growers of the domestic feed and industrial non-food uses requirement for StarLink corn;
- a toll free number on all literature provided to Growers where the Grower could call for information on the refuge requirements, domestic feed and industrial non-food uses only requirements, isolation distances, and other general product information; and/or
- a letter prior to harvest reminding the Growers of the domestic feed and industrial non-food uses only restriction and providing Growers with a list of potential delivery sites in the Grower's county; and

(2) An order of restitution, pursuant to § 407.100.4 RSMo 2000, payable to the state, as may be necessary to restore any person who has suffered any ascertainable loss as a result of Defendants' violation of § 407.020 as set forth above; and

(3) Defendants to pay a civil penalty of not more than one thousand dollars per violation of the laws of Chapter 407 pursuant to § 407.100.6 RSMo 2000; and

(4) Defendants to pay the attorney general's costs, including the cost of the investigation and prosecution of this action to enforce the provisions of Chapter 407, and including reasonable attorney's fees, as well as normal court costs pursuant to § 407.130 RSMo 2000; and

(5) Defendants to pay an amount equal to ten percent of the total restitution awarded, or such other amount as may be agreed upon by the parties or awarded by the court, which amount shall

be paid into the state treasury to the credit of the merchandising practices revolving fund, pursuant to § 407.140 RSMo 2000; and

(6) Such further relief as the Court deems just and proper.

COUNT II

(Misrepresentation)

34. Plaintiff restates, realleges and incorporates by reference paragraphs 1 - 33 of this petition as if more fully set forth herein.

35. Defendants sold, distributed, or offered for sale, StarLink seed corn in the State of Missouri which had false or misleading advertising in that it represented in advertising that StarLink seed corn was superior seed corn, without advertising that the corn produced by such seed could only be used for domestic feed and industrial non-food uses.

36. As a direct and proximate result of the Aventis' false or misleading advertising of StarLink corn, consumers in Missouri, including Growers, farmers, elevator businesses, and investors who have grown, transported, stored, or purchased corn which contains Cry9C, have been harmed in that:

- a. they have not been able to fulfill contracts which required them to supply corn that does not contain Cry9C;
- b. such corn is worth less on the market than corn which does not contain Cry9C;
- c. the market options for such corn are considerably fewer than those for corn which does not contain Cry9C;

d. they have had to accept a lower price for the corn than they would have if it had not contained Cry9C or been contaminated with Cry9c

e. they have expended a substantial amount of time and money working to determine if their corn contains Cry9C;

f. they have had to refrain from selling their corn until an appropriate market can be found, and have therefore incurred additional expenses associated with the transportation and storage of the grain, have lost opportunities to use money that would have been available from the sale of the corn;

g. they have expended a substantial amount of time and money to clean farm implements, equipment, trailers, trucks, and storage facilities that were used to plant, care for, harvest, transport, and store StarLink seed corn and corn that contained Cry9C; and

h. they have suffered harm to their credibility as a reliable supplier of corn to the normal purchasers of their corn.

WHEREFORE, the Attorney General prays this Court for a judgment on behalf of the Plaintiff and against the defendants that Defendant Aventis Cropscience USA LP and Defendant Aventis Cropscience USA Holding Inc. have violated § 407.020, RSMo 2000, as aforesaid, and further ordering:

(1) Preliminary and permanent injunctions, pursuant to § 407.100.1, RSMo, 2000, enjoining Defendants Aventis Cropscience USA LP and Aventis Cropscience USA Holding Inc., and their parent companies, subsidiaries, agents, employees, representatives, attorneys, assigns, and all those acting for them in whatever capacity from:

(a) Violating § 407.020, RSMo 2000 by the act, use or employment of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of any material fact in connection with the sale or advertisement of any merchandise or commodity, including but not limited to, seed corn and pesticide, in trade or commerce in or from the State of Missouri, including but not limited to, that conduct alleged herein;

(b) Marketing, advertising, offering, selling and/or promoting by any means, in or into the State of Missouri any seed which is not approved for human consumption by the appropriate regulatory agency;

(c) Misrepresenting that StarLink seed corn is superior seed corn for the production of corn by farmers in the State of Missouri; and

(d) Concealing, suppressing and omitting the material facts set forth as follows:

- the need to direct StarLink corn for domestic feed and industrial non-food uses only;
- the need for all Growers to sign a certain Grower Agreement containing certain refuge requirements, the domestic feed and industrial non-food uses only requirements, and isolation provisions regarding grain grown within 660 feet of the corn produced from StarLink seed corn needing to be directed to domestic feed and industrial non-food uses;
- the information contained in a Grower Guide that was to be provided to all Growers according to the requirements of the EPA;

- the identity of the local feed outlets and/or elevators that direct grain to domestic feed and industrial non-food uses in the Grower's county or the adjacent counties;
- prior to planting, a letter reminding Growers of the domestic feed and industrial non-food uses requirement for StarLink corn;
- a toll free number on all literature provided to Growers where the Grower could call for information on the refuge requirements, domestic feed and industrial non-food uses only requirements, isolation distances, and other general product information; and/or
- a letter prior to harvest reminding the Growers of the domestic feed and industrial non-food uses only restriction and providing Growers with a list of potential delivery sites in the Grower's county; and

(2) An order of restitution, pursuant to § 407.100.4 RSMo 2000, payable to the state, as may be necessary to restore any person who has suffered any ascertainable loss as a result of Defendants' violation of § 407.020 as set forth above; and

(3) Defendants to pay a civil penalty of not more than one thousand dollars per violation of the laws of Chapter 407 pursuant to § 407.100.6 RSMo 2000; and

(4) Defendants to pay the attorney general's costs, including the cost of the investigation and prosecution of this action to enforce the provisions of Chapter 407, and including reasonable attorney's fees, as well as normal court costs pursuant to § 407.130 RSMo 2000; and

(5) Defendants to pay an amount equal to ten percent of the total restitution awarded, or such other amount as may be agreed upon by the parties or awarded by the court, which amount shall be

paid into the state treasury to the credit of the merchandising practices revolving fund, pursuant to § 407.140 RSMo 2000; and

(6) Such further relief as the Court deems just and proper.

COUNT III

(Unfair Practice - Missouri Pesticide Registration Act)

37. Plaintiff restates, realleges and incorporates by reference paragraphs 1 - 36 of this petition as if more fully set forth herein.

38. Section 281.300 RSMo 2000, a section of the Missouri Pesticide Registration Act, deems it unlawful to distribute, sell, or offer for sale any pesticide if it is misbranded.

39. Section 281.220(24)(f) RSMo 2000, a section of the Missouri Pesticide Registration Act, provides that a pesticide is misbranded if the "labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 281.240, are adequate to protect the health of the applicator, other humans, or the environment."

40. Defendants sold, distributed, offered for sale, or exposed for sale, StarLink seed corn, as a pesticide, in the State of Missouri and in violation of the Missouri Pesticide Registration Act.

41. Defendants' acts above constitute an unfair practice in violation of § 407.020 RSMo 2000 because such acts and practices offend the public policy of Missouri against the sale of misbranded pesticides as that policy is stated in § 281.300 and because such practices threaten to cause, or have caused, a substantial risk of harm to Missouri consumers.

42. As a direct and proximate result of the Aventis' sale, distribution, or offering for sale, a misbranded pesticide, to wit, StarLink seed corn, consumers in Missouri, including Growers, farmers, elevator businesses, and investors who have grown, transported, stored, or purchased corn which contains Cry9C, were harmed in that:

a. they have not been able to fulfill contracts which required them to supply corn that does not contain Cry9C;

b. such corn is worth less on the market than corn which does not contain Cry9C;

c. the market options for such corn are considerably fewer than those for corn which does not contain Cry9C;

d. they have had to accept a lower price for the corn than they would have if it had not contained Cry9C or been contaminated with Cry9c

e. they have expended a substantial amount of time and money working to determine if their corn contains Cry9C;

f. they have had to refrain from selling their corn until an appropriate market can be found, and have therefore incurred additional expenses associated with the transportation and storage of the grain, have lost opportunities to use money that would have been available from the sale of the corn;

g. they have expended a substantial amount of time and money to clean farm implements, equipment, trailers, trucks, and storage facilities that were used to plant, care for, harvest, transport, and store StarLink seed corn and corn that contained Cry9C; and

h. they have suffered harm to their credibility as a reliable supplier of corn to the normal purchasers of their corn.

WHEREFORE, the Attorney General prays this Court for a judgment on behalf of the Plaintiff and against the defendants that Defendant Aventis Cropscience USA LP and Defendant Aventis Cropscience USA Holding Inc. have violated § 407.020, RSMo 2000, as aforesaid, and further ordering:

(1) Preliminary and permanent injunctions, pursuant to § 407.100.1, RSMo, 2000, enjoining Defendants Aventis Cropscience USA LP and Aventis Cropscience USA Holding Inc., and their parent companies, subsidiaries, agents, employees, representatives, attorneys, assigns, and all those acting for them in whatever capacity from:

(a) Violating § 407.020, RSMo 2000 by the act, use or employment of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of any material fact in connection with the sale or advertisement of any merchandise or commodity, including but not limited to, seed corn and pesticide, in trade or commerce in or from the State of Missouri, including but not limited to, that conduct alleged herein;

(b) Marketing, advertising, offering, selling and/or promoting by any means, in or into the State of Missouri any seed which is not approved for human consumption by the appropriate regulatory agency;

(c) Misrepresenting that StarLink seed corn is superior seed corn for the production of corn by farmers in the State of Missouri; and

(d) Concealing, suppressing and omitting the material facts set forth as follows:

- the need to direct StarLink corn for domestic feed and industrial non-food uses only;
- the need for all Growers to sign a certain Grower Agreement containing certain refuge requirements, the domestic feed and industrial non-food uses only requirements, and isolation provisions regarding grain grown within 660 feet of the corn produced from StarLink seed corn needing to be directed to domestic feed and industrial non-food uses;
- the information contained in a Grower Guide that was to be provided to all Growers according to the requirements of the EPA;
- the identity of the local feed outlets and/or elevators that direct grain to domestic feed and industrial non-food uses in the Grower's county or the adjacent counties;
- prior to planting, a letter reminding Growers of the domestic feed and industrial non-food uses requirement for StarLink corn;
- a toll free number on all literature provided to Growers where the Grower could call for information on the refuge requirements, domestic feed and industrial non-food uses only requirements, isolation distances, and other general product information; and/or
- a letter prior to harvest reminding the Growers of the domestic feed and industrial non-food uses only restriction and providing Growers with a list of potential delivery sites in the Grower's county; and

(e) Selling misbranded pesticide; and

(2) An order of restitution, pursuant to § 407.100.4 RSMo 2000, payable to the state, as may be necessary to restore any person who has suffered any ascertainable loss as a result of Aventis' violation of § 407.020 as set forth above; and

(3) Aventis to pay a civil penalty of not more than one thousand dollars per violation of the laws of Chapter 407 pursuant to § 407.100.6 RSMo 2000; and

(4) Aventis to pay the attorney general's costs, including the cost of the investigation and prosecution of this action to enforce the provisions of Chapter 407, and including reasonable attorney's fees, as well as normal court costs pursuant to § 407.130 RSMo 2000; and

(5) Aventis to pay an amount equal to ten percent of the total restitution awarded, or such other amount as may be agreed upon by the parties or awarded by the court, which amount shall be paid into the state treasury to the credit of the merchandising practices revolving fund, pursuant to § 407.140 RSMo 2000; and

(6) Such further relief as the Court deems just and proper.

COUNT IV

(Unfair Practice - Failure to Disclose)

43. Plaintiff restates, realleges and incorporates by reference paragraphs 1 - 42 of this petition as if more fully set forth herein.

44. Aventis has engaged in the unfair practice of marketing, offering, advertising, selling and promoting StarLink seed corn for sale without disclosing the restrictions on the use and sale of such seed corn and the corn to be produced from such seed corn and such conduct is unethical,

oppressive, or unscrupulous, as it presents a risk of, or has caused substantial injury to Missouri Growers and consumers;

45. Aventis' conduct constitutes an unfair practice in violation of § 407.020 RSMo 2000.

46. As a direct and proximate result of Aventis' conduct in marketing, offering, advertising, selling and promoting StarLink seed corn for sale, consumers in Missouri, including Growers, farmers, elevator businesses, and investors who have grown, transported, stored, or purchased corn which contains Cry9C, were harmed economically in that:

a. they have not been able to fulfill contracts which required them to supply corn that does not contain Cry9C;

b. such corn is worth less on the market than corn which does not contain Cry9C;

c. the market options for such corn are considerably fewer than those for corn which does not contain Cry9C;

d. they have had to accept a lower price for the corn than they would have if it had not contained Cry9C or been contaminated with Cry9c

e. they have expended a substantial amount of time and money working to determine if their corn contains Cry9C;

f. they have had to refrain from selling their corn until an appropriate market can be found, and have therefore incurred additional expenses associated with the transportation and storage of the grain, have lost opportunities to use money that would have been available from the sale of the corn;

g. they have expended a substantial amount of time and money to clean farm implements, equipment, trailers, trucks, and storage facilities that were used to plant, care for, harvest, transport, and store StarLink seed corn and corn that contained Cry9C; and

h. they have suffered harm to their credibility as a reliable supplier of corn to the normal purchasers of their corn.

WHEREFORE, the Attorney General prays this Court for a judgment on behalf of the Plaintiff and against the defendants that Defendant Aventis CropScience USA LP and Defendant Aventis CropScience USA Holding Inc. have violated § 407.020, RSMo 2000, as aforesaid, and further ordering:

(1) Preliminary and permanent injunctions, pursuant to § 407.100.1, RSMo, 2000, enjoining Defendants Aventis CropScience USA LP and Aventis CropScience USA Holding Inc., and their parent companies, subsidiaries, agents, employees, representatives, attorneys, assigns, and all those acting for them in whatever capacity from:

(a) Violating § 407.020, RSMo 2000 by the act, use or employment of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of any material fact in connection with the sale or advertisement of any merchandise or commodity, including but not limited to, seed corn and pesticide, in trade or commerce in or from the State of Missouri, including but not limited to, that conduct alleged herein;

(b) Marketing, advertising, offering, selling and/or promoting by any means, in or into the State of Missouri any seed which is not approved for human consumption by the appropriate regulatory agency;

(c) Misrepresenting that StarLink seed corn is superior seed corn for the production of corn by farmers in the State of Missouri; and

(d) Concealing, suppressing and omitting the material facts set forth as follows:

- the need to direct StarLink corn for domestic feed and industrial non-food uses only;
- the need for all Growers to sign a certain Grower Agreement containing certain refuge requirements, the domestic feed and industrial non-food uses only requirements, and isolation provisions regarding grain grown within 660 feet of the corn produced from StarLink seed corn needing to be directed to domestic feed and industrial non-food uses;
- the information contained in a Grower Guide that was to be provided to all Growers according to the requirements of the EPA;
- the identity of the local feed outlets and/or elevators that direct grain to domestic feed and industrial non-food uses in the Grower's county or the adjacent counties;
- prior to planting, a letter reminding Growers of the domestic feed and industrial non-food uses requirement for StarLink corn;
- a toll free number on all literature provided to Growers where the Grower could call for information on the refuge requirements, domestic feed and

industrial non-food uses only requirements, isolation distances, and other general product information; and/or

- a letter prior to harvest reminding the Growers of the domestic feed and industrial non-food uses only restriction and providing Growers with a list of potential delivery sites in the Grower's county; and

(2) An order of restitution, pursuant to § 407.100.4 RSMo 2000, payable to the state, as may be necessary to restore any person who has suffered any ascertainable loss as a result of Aventis' violation of § 407.020 as set forth above; and

(3) Aventis to pay a civil penalty of not more than one thousand dollars per violation of the laws of Chapter 407 pursuant to § 407.100.6 RSMo 2000; and

(4) Aventis to pay the attorney general's costs, including the cost of the investigation and prosecution of this action to enforce the provisions of Chapter 407, and including reasonable attorney's fees, as well as normal court costs pursuant to § 407.130 RSMo 2000; and

(5) Aventis to pay an amount equal to ten percent of the total restitution awarded, or such other amount as may be agreed upon by the parties or awarded by the court, which amount shall be paid into the state treasury to the credit of the merchandising practices revolving fund, pursuant to § 407.140 RSMo 2000; and

(6) Such further relief as the Court deems just and proper.

Respectfully submitted,

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